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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2011-92

13 **STEPHEN THOMAS PELTIER**
1317 Virginia Street # 3
Berkeley, CA 94702
Registered Nurse License No. RN 729739

A C C U S A T I O N

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about July 3, 2008, the Board of Registered Nursing issued Registered Nurse
22 License Number RN 729739 to Stephen Thomas Peltier (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on June 30, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
9 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
10 disciplinary action during the period within which the license may be renewed, restored, reissued
11 or reinstated.

12 STATUTORY & REGULATORY PROVISIONS

13 7. Section 2761 of the Code states:

14 "The board may take disciplinary action against a certified or licensed nurse or deny an
15 application for a certificate or license for any of the following:

16 "(a) Unprofessional conduct

17 ". . . .

18 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
19 functions, and duties of a registered nurse, in which event the record of the conviction shall be
20 conclusive evidence thereof.

21 ". . . ."

22 8. Section 2762 of the Code states:

23 "In addition to other acts constituting unprofessional conduct within the meaning of this
24 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
25 chapter to do any of the following:

26 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
27 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
28 administer to another, any controlled substance as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
2 defined in Section 4022.

3 "....

4 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
5 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
6 or the possession of, or falsification of a record pertaining to, the substances described in
7 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
8 thereof.

9 "...."

10 9. Section 490 of the Code states:

11 "In addition to any other action that a board is permitted to take against a licensee, a board
12 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
13 the crime is substantially related to the qualifications, functions, or duties of the business or
14 profession for which the license was issued.

15 "....

16 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
17 conviction following a plea of nolo contendere. Any action that a board is permitted to take
18 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
19 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
20 made suspending the imposition of sentence, irrespective of a subsequent order under the
21 provisions of Section 1203.4 of the Penal Code.

22 "...."

23 10. Title 16, section 1444 of the California Code of Regulations provides in pertinent part
24 that:

25 "A conviction or act shall be considered to be substantially related to the qualifications,
26 functions or duties of a registered nurse if to a substantial degree it evidences the present or
27 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
28 safety, or welfare...."

1
2 11. Section 493 of the Code states, in pertinent part:

3 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
4 the department pursuant to law to deny an application for a license or to suspend or revoke a
5 license or otherwise take disciplinary action against a person who holds a license, upon the
6 ground that the applicant or the licensee has been convicted of a crime substantially related to the
7 qualifications, functions, and duties of the licensee in question, the record of conviction of the
8 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
9 and the board may inquire into the circumstances surrounding the commission of the crime in
10 order to fix the degree of discipline or to determine if the conviction is substantially related to the
11 qualifications, functions, and duties of the licensee in question.

12"

13 12. California Health & Safety Code § 11357 provides in pertinent part that unless
14 otherwise authorized by law, possession of marijuana or hashish is a criminal offense.

15 13. California Health & Safety Code § 11359 provides:

16 "Every person who possesses for sale any marijuana, except as otherwise provided by law,
17 shall be punished by imprisonment in the state prison."

18 14. California Health & Safety Code § 11362.77(a) provides:

19 "A qualified [medical marijuana] patient or primary caregiver may possess no more than
20 eight ounces of dried marijuana per qualified [medical marijuana] patient. In addition, a qualified
21 [medical marijuana] patient or primary caregiver may also maintain no more than six mature or
22 12 immature marijuana plants per qualified [medical marijuana] patient."

23 **COST RECOVERY**

24 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licensee found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 16. Respondent is subject to disciplinary action under §§ 2761(a), 2761(f), 2762(c), and
4 490 of the Code in that on or about March 12, 2010, in a case entitled *People of the State of*
5 *California v. Stephen Thomas Peltier*, Case Number 421065, the Respondent pleaded nolo
6 contendere to and was convicted of violating California Penal Code § 32 (assessory to a felony
7 after the fact). The Respondent was sentenced to serve 1 day in jail, to serve 3 years of court
8 probation, to forfeit a significant amount of currency and personal property, and to pay a fine of
9 \$178.00. The circumstances of the conviction were as follows.

10 17. On or about August 14, 2009, police raided two properties that were operating under
11 the control of the Respondent. In a raid on 1336 Cornelle Street, Berkeley, California, police
12 confiscated 3,388.7 grams (7.47 pounds) of dried marijuana, 20 marijuana plants, 32.5 grams
13 (1.15 ounces) of hashish, \$6,980.00 in currency, and one digital scale. In a raid on 1317 Virginia
14 Street #3, Berkeley, California, police confiscated 8,227 grams (18.14 pounds) of dried
15 marijuana, 143 marijuana plants, a number of lighting devices, and one digital scale. Based on
16 the foregoing, the Respondent was arrested, subjected to criminal charges, and eventually
17 convicted.

18 SECOND CAUSE FOR DISCIPLINE

19 (Possession of Controlled Substance in Violation of Law)

20 18. Respondent is subject to disciplinary action under § 2762(a) of the Code in that he
21 possessed a controlled substance in violation of various laws including, *inter alia*, California
22 Health & Safety Code §§ 11357, 11359, and/or 11362.77(a). The circumstances supporting this
23 cause for discipline are described above in the First Cause For Discipline.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number RN 729739, issued to
28 Stephen Thomas Peltier;

1 2. Ordering Stephen Thomas Peltier to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: _____

8/6/10

Stacie Ben

for LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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